U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-K-

DATE: SEPT. 18, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a human resources manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that the Director did not consider the evidence submitted, and that she is eligible for a waiver of the job offer requirement under the *Dhanasar* framework.[1]

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification

[1] The Petitioner also indicated in Part 2 of Form I-290B, Notice of Appeal or Motion, that she would submit additional evidence to the AAO within 30 calendar days of filing the appeal and, in her accompanying statement, she mentioned specific documentation that would be submitted. As of the date of this decision, more than five months later, we have not received additional evidence, and we will therefore base our determination on the record as of the date the appeal was submitted.

requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.[2] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

As noted above, before turning to the Petitioner's eligibility for a national interest waiver, we must first determine whether she qualifies for the underlying EB-2 visa classification.[4] The Petitioner initially submitted a screenprint from a website that, based only upon the website address[5], appears to be associated with [redacted] While this document appears to indicate that the Petitioner earned a Master of Arts degree in Organizational Psychology on May 16, 2012, it also clearly states that it is not an official transcript. 8 C.F.R. § 204.5(k)(3)(i) states as follows:

> (i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:
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> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

As the Petitioner has not submitted an official academic record which demonstrates that she holds a United States advanced degree or a foreign equivalent degree, or a baccalaureate degree or foreign

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] We note that, while the Director included eligibility for the EB-2 classification as a possible ground for denial in her December 2017 notice of intent to deny (NOID), this issue was not addressed in the denial decision.

[5] https/[redacted]

equivalent and five years of progressive post-baccalaureate experience, the record does not establish that she qualifies as a member of the professions holding an advanced degree. In addition, the Petitioner has not indicated that she qualifies as an alien of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii), or submitted evidence to establish that she meets any of the six criteria listed and possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Accordingly, we do not find that she has adequately documented her qualification for the underlying EB-2 visa classification.

B. National Interest Waiver

As noted above, under the *Dhanasar* framework, the substantial merit of the proposed endeavor may be demonstrated in a wide range of areas. To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. In Part 6 of the Form I-140, the Petitioner lists her job title as "Human Resources Manager," and a brief statement submitted with her initial evidence states her intention to be employed by the She indicates in Part 15 of Form ETA 750 B that she is currently employed as an "M&A HR Specialist" with In responding to the Director's NOID, the Petitioner claims that has been unable to hire U.S. workers because of its unfamiliarity with U.S. labor and tax laws. She further describes her proposed endeavor in a brief statement submitted with her appeal, stating that she "seeks to assist in the correction of a well-recognized national condition, the inability of foreign corporations, especially those controlled by a foreign government to participate in the national economy." The Petitioner goes on to state that "the ability to develop a personnel department knowledgeable about US requirements as well as restrictions on those holding various nonimmigrant visas would result in increased employment of US workers, subsequent higher tax revenue and expanded investment in the US market."

While the Petitioner asserts that her employment with and possibly similar semi-governmental organizations, would improve its ability to employ U.S workers and positively impact the national economy, she has not submitted evidence to support these assertions. The record does not contain evidence about or similar organizations, or their ability or intent to hire U.S. workers, nor does it contain documentation relating to the "well-recognized national condition" that the Petitioner refers to. Further, she has not sufficiently explained or documented how her proposed endeavor of developing a personnel department within such a company would create a significant economic impact or have broader implications for the U.S. economy. The Petitioner has not shown that the prospective implications of her work include "substantial positive economic effects" or otherwise rise to the level of significance required by *Dhanasar*. *Id.*, at 890. As the Petitioner has not established the substantial merit or national importance of her proposed endeavor, we do not find that she has met the first prong of the *Dhanasar* framework.

The second prong under the *Dhanasar* framework requires the Petitioner to establish that she is well-positioned to advance her proposed endeavor. Further, the third prong requires her to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer

and thus of a labor certification. However, because the Petitioner has not established the substantial merit or national importance of her proposed endeavor as required in the first prong of the framework, she is not eligible for a national interest waiver. Accordingly, discussion of the factors under the second and third prongs would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established her eligibility for the EB-2 visa classification, nor has she met the requisite three prongs set forth under the *Dhanasar* framework. Accordingly, we find that she has not established that she is eligible or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of H-K-*, ID# 1556890 (AAO Sept. 18, 2018)